



July 23, 2004

Ms. Jennifer J. Johnson  
Secretary  
Board of Governors of the Federal Reserve System  
20<sup>th</sup> Street and Constitution Avenue, NW  
Washington, DC 20551

**RE: Docket #OP-1196; Study & Request for Comment Re: Disclosure of Debit Card Fees**

Dear Ms. Johnson:

On behalf of the National Association of Federal Credit Unions (NAFCU), the only trade association that exclusively represents the interests of our nation's federal credit unions, I am responding to the Federal Reserve Board's (Board) Notice of Study and Request for Information regarding disclosure requirements for debit card fees under the Electronic Fund Transfer Act (EFTA) and Regulation E.

At the request of members of the United States Senate Committee on Banking, Housing, and Urban Affairs, the Board is conducting a study about disclosures of debit card fees. Specifically, the Board requests comment on: (1) whether the existing disclosures required by the EFTA adequately inform consumers of fees imposed by an account-holding financial institution when the debit card is used to make a purchase from a merchant; (2) whether there is a need for requiring additional disclosures in each periodic account activity statement to reflect fees imposed by account-holding institutions; and (3) whether any benefits would be derived from requiring disclosure of the amount, source, and recipient of each fee, as well as a summary of the total amount of such fees for the period, and calendar year-to-date.

The Electronic Fund Transfer Act (EFTA) sets forth the requirements governing electronic fund transfers. The EFTA is implemented by the Board's Regulation E and interpreted by Official Staff Commentary. Currently, under Regulation E, there are three separate disclosures required in a point of sale (POS) transaction. First, the initial disclosure requirement, which requires financial institutions to make disclosures at the time a consumer contracts for an electronic funds transfer (EFT) service, or before the first EFT is made involving the consumer's account.<sup>1</sup> The disclosure must state any fees imposed by the account-holding institution for an EFT, or the right to make EFTs.<sup>2</sup> Second, periodic statement disclosures must be sent by a financial institution to a consumer for each account through which an EFT can be made.<sup>3</sup> The statement must contain "the amount of any fees assessed during the statement period for electronic fund transfers, for the right to make transfers, or for account maintenance."<sup>4</sup> Third, in addition to the initial disclosure and the periodic statement disclosure, financial institutions must also

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<sup>1</sup> 12 C.F.R. § 205.7(b)(5).

<sup>2</sup> *Id.*

<sup>3</sup> 12 C.F.R. § 205.9(b)(3).

<sup>4</sup> *Id.*

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make a receipt available to a consumer when an EFT is initiated “at an electronic terminal.”<sup>5</sup> This disclosure requirement is usually satisfied when a merchant provides a terminal receipt during a POS transaction that states; the amount of the transfer, the date of the transfer, transfer type, the terminal location, and other information.<sup>6</sup> The Board asks whether these existing disclosure requirements are effective, either separately or cumulatively, in providing consumers with sufficient information about POS transaction fee practices.

NAFCU strongly believes that the existing disclosure requirements under Regulation E both adequately and effectively inform consumers of fees that may be imposed by account-holding financial institutions and that requiring additional disclosure requirement will add unnecessary regulatory burden on financial institutions.

Even though most credit unions do not impose fees on members who engage in PIN based POS transactions, NAFCU is concerned that requiring financial institutions to disclose PIN-use fees at the point of sale would affect *all* financial institutions involved in a POS network. NAFCU is not aware of any currently-available, cost-effective technology that would allow financial institutions to disclose these fees on merchant's POS terminals or receipts and NAFCU believes that any requirement for such a disclosure may be difficult at best. If such equipment were available, it would be burdensome and costly to both merchants and financial institutions because the change in technology would require investments in upgraded POS readers and processing/settlement systems. This, overall, could negatively affect consumers since the additional costs could be passed back through increased fees. Furthermore, the financial and regulatory burden to financial institutions resulting from additional disclosures at the POS cannot be justified since any benefits to the consumer would be outweighed by the fact that the consumer has already been informed of any fees in both their initial disclosures and on their periodic statements.

Additionally, NAFCU does not believe that periodic statement disclosures should contain summaries of total POS debit transaction fees for the reporting period and year-to-date. This type of summarization would not only be challenging and expensive to financial institutions, but also could be confusing to consumers—especially summarization of calendar year-to-date POS debit transactions, given that periodic statements usually only contain information specific to the statement cycle. Finally, NAFCU does not believe that requiring additional disclosures in the initial disclosures, periodic statements, or at the POS would effect the consumer's decision of whether to use the debit card.

NAFCU would like to thank you for this opportunity to share its views on this important topic. Should you have any questions or require additional information please contact me or Kimberly Dewey, Associate Director of Regulatory Affairs, by phone at (800) 336-4644, ext. 268, or by email at [kdewey@nafcu.org](mailto:kdewey@nafcu.org).

Sincerely,



Fred R. Becker, Jr.  
President/CEO

FRB/kds

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<sup>5</sup> 12 C.F.R. § 205.2(h).

<sup>6</sup> 12 C.F.R. § 205.9(a).